

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PFIZER INC

Plaintiff/Counterclaim  
Defendant,

V.

TEVA PHARMACEUTICALS USA, INC.  
and TEVA PHARMACEUTICAL  
INDUSTRIES LTD.

Defendants/Counterclaim  
Plaintiffs.

Civil Action No. 06-89-JJF

## JURY TRIAL DEMANDED

**PLAINTIFF PFIZER INC'S REPLY TO THE COUNTERCLAIMS OF  
DEFENDANT TEVA PHARMACEUTICAL INDUSTRIES, LTD.**

Pfizer Inc (“Pfizer”), by and through its undersigned counsel, hereby files its Reply to the Counterclaims of Defendant Teva Pharmaceutical Industries, Ltd. (“Teva Ltd.”) in the above-captioned action. Pfizer’s reply to the counterclaims employs the same numbered paragraphs, beginning at paragraph 50, as used by defendant Teva Ltd. in its Amended Answer and Counterclaims (D.I. 37). Except to the extent expressly and specifically admitted herein, such admissions being solely for the purposes of this action and none other, Pfizer denies each and every allegation contained in the Counterclaims.

## REPLY TO THE COUNTERCLAIMS AGAINST PFIZER

## THE PARTIES

50. Upon information and belief, admitted.

51. Upon information and belief, admitted.

52. Admitted.

53. Admitted.

54. Admitted.

### **JURISDICTION AND VENUE**

55. Pfizer admits that the Counterclaims purport to state a cause of action for declaratory judgment allegedly based on claims arising under 35 U.S.C. §§ 1 *et seq.*, and thus this Court has subject matter jurisdiction over this counterclaim action pursuant to 28 U.S.C. §§ 1331 and 1338(a). All other allegations in paragraph 55 are denied on the basis that Pfizer lacks knowledge or information sufficient to form a belief as to their truth.

56. Pfizer admits that it has sued Teva Ltd. for, *inter alia*, infringement of Pfizer's U.S. Patent No. 6,977,243 ("the '243 patent"), thus there is an actual controversy within the Court's jurisdiction pursuant to 28 U.S.C. § 2201 and 2202. Pfizer also admits that the Counterclaims purport to state a cause of action for declaratory judgment that the '243 patent is not infringed and invalid. Pfizer denies all other allegations in paragraph 56.

57. Admitted.

58. Admitted.

### **THE CONTROVERSY**

59. Upon information and belief, admitted.

60. Upon information and belief, admitted.

61. Denied.

62. Admitted.

63. Pfizer admits that on February 8, 2006, it filed the present action against Teva Ltd. for infringement of the '243 patent in this Court and the Complaint in this action speaks for itself. All other allegations in paragraph 63 which are inconsistent with the Complaint are denied on the basis that Pfizer lacks knowledge or information sufficient to form a belief as to their truth.

64. Admitted that an actual and justiciable controversy exists as alleged but all other allegations of paragraph 64 are denied.

**COUNT I  
(Declaratory Judgment of Noninfringement)**

65. Pfizer incorporates by reference and restates its replies to paragraphs 50-64 as though fully set forth herein.

66. Denied.

**COUNT II  
(Declaratory Judgment of Noninfringement under 35 U.S.C. § 271(e)(2)(A))**

67. Pfizer incorporates by reference and restates its replies to paragraphs 50-66 as though fully set forth herein.

68. Denied.

**COUNT III  
(Declaratory Judgment of Noninfringement under 35 U.S.C. § 271(b))**

69. Pfizer incorporates by reference and restates its replies to paragraphs 50-68 as though fully set forth herein.

70. Denied.

**COUNT IV  
(Declaratory Judgment of Invalidity)**

71. Pfizer incorporates by reference and restates its replies to paragraphs 50-

70 as though fully set forth herein.

72. Denied.

**RESPONSE TO TEVA LTD.'S PRAYER FOR RELIEF**

Pfizer denies that Teva Ltd. is entitled to any relief as sought in the "Prayer for Relief" of the Counterclaims.

WHEREFORE, Pfizer requests the following relief:

A. An order dismissing all of Teva Ltd.'s Counterclaims with prejudice and denying all relief sought by Teva Ltd.

B. An order declaring that the '243 patent is not-invalid and that it is enforceable and has been infringed by Teva Ltd.

CONNOLLY BOVE LODGE & HUTZ LLP

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Dated: July 10, 2006  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2006, I electronically filed **PLAINTIFF PFIZER INC'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT TEVA PHARMACEUTICAL INDUSTRIES, LTD.** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Richard D. Kirk  
The Bayard Firm  
222 Delaware Avenue, 9<sup>th</sup> Floor  
Wilmington, DE 19801

I hereby certify that on July 10, 2006, I have mailed by First Class Mail, the document(s) to the following non-registered participants:

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